



POLICE DEPARTMENT

September 11, 2007

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Sergeant Davor Milevoj  
Tax Registry No. 916226  
Medical Division  
Disciplinary Case No. 81251/05

Police Officer Jorge Hernaiz  
Tax Registry No. 906448  
Housing Borough Manhattan  
Disciplinary Case Nos. 81257/05 & 82685/07  
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The above-named members of the Department appeared before me on  
May 25, 2007, charged with the following:

Disciplinary Case No. 81251/05

1. Said Sergeant Davor Milevoj, assigned to the 43 Precinct, on or about April 17, 2004, did wrongfully and without just cause fail to supervise another member of the service under his supervision in that he failed and neglected to properly instruct said subordinate in how to safeguard a crime scene, resulting in the loss of evidence from the crime scene.

P.G. 202-17, Page 1 Paragraph 1 – PATROL SUPERVISOR

2. Said Sergeant Davor Milevoj, assigned to the 43 Precinct, on or about April 17, 2004, did fail and neglect to properly make and maintain memo book entries.

P.G. 206-03, Page 1, Paragraph 6 – VIOLATIONS

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY

Disciplinary Case No. 81257/05

1. Said Police Officer Jorge Hernaiz, assigned to the 43 Precinct, on or about April 17, 2004, did fail and neglect to properly safeguard a crime scene, resulting in the loss of evidence from a crime scene.

P.G. 203-10, Page 1 Paragraph 5 – PROHIBITED CONDUCT  
P.G. 206-03, Page 1, Paragraph 26 – VIOLATIONS

2. Said Police Officer Jorge Hernaiz, assigned to the 43 Precinct, on or about April 17, 2004, did fail and neglect to properly make and maintain memo book entries.

P.G. 206-03, Page 1, Paragraph 6 – VIOLATIONS  
P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY

Disciplinary Case No. 82685/07

1. Said Police Officer Jorge Hernaiz, assigned to the 48 Precinct, on or about and between January 16, 2006 and July 19, 2006, did knowingly associate with a person, known to the Department, reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities, in that Officer Hernaiz carried on a personal relationship with said individual despite his knowledge that said individual had a criminal history.

P.G. 203-10, Page 1, Paragraph 2(c) – GENERAL REGULATIONS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office. Respondent Milevoj was represented by Philip Mellea, Esq., and Respondent Hernaiz was represented by Eric Sanders, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 81251/05

Respondent Milevoj is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 81257/05

Respondent Hernaiz is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 82685/07

Respondent Hernaiz is found Guilty as charged.

EVIDENCE

The Department's Case

The Department called Sergeant Joseph Rinaldi and Detective Randy Katakofsky as witnesses.

Sergeant Joseph Rinaldi

Rinaldi, who is currently assigned to the Patrol Borough Bronx Investigations Unit, investigated allegations of misconduct involving a crime scene at [REDACTED]. He testified that on April 17, 2004, a homicide occurred at that location, and a crime scene was created. Two police officers [subsequently identified as Police Officers Mercado and Ortiz] were assigned to secure the scene while a warrant was getting issued; and, when the day tour started, the assignment was turned over to day-tour personnel. Respondent Milevoj was the day-tour patrol supervisor. During the course of his investigation, Rinaldi spoke with Respondent Milevoj. Respondent Milevoj told Rinaldi that he was instructed to place a police officer inside the crime scene. Respondent Milevoj consequently directed Respondent Hernaiz to go to the scene. During the course of the investigation, Rinaldi also spoke with Respondent Hernaiz. Respondent Hernaiz

told Rinaldi that Respondent Milevoj never specifically instructed him to go *inside* the crime scene. Rinaldi testified that upon review of the Respondents' Activity Logs, he learned that neither of the Respondents had any entries relating to the crime scene that day.

Rinaldi testified that it is proper procedure for a police officer assigned as relief at a crime scene to speak with the officers being relieved about the scene, to physically inspect the scene, and to secure the perimeter around the scene to ensure that there is no entry. The relieving officer is expected to physically inspect the evidence at the scene instead of merely relying on the word of the officers who were at the scene before him. Rinaldi stated that the crime scene at [REDACTED] was a private dwelling that contained three entrances: a front door, a side door, and a rear door. In addition, there were windows on the side and the rear. Rinaldi stated that the dwelling possibly contained two or three apartments, but he was not certain.

On cross-examination, Rinaldi testified that Respondent Milevoj should have had entries in his Activity Log indicating that he went to the crime scene and inspected Respondent Hernalz's Activity Log. According to Rinaldi, it is the responsibility of the relieving officer at a crime scene to speak with those officers being relieved about where to position himself. He acknowledged that if the only instruction that a sergeant receives is to secure a crime scene, that sergeant would relay that information to a police officer under his supervision.

On redirect-examination, Rinaldi testified that it would be prudent for a sergeant to enter in his Activity Log any instructions that he receives about a crime scene. It would also be prudent for a sergeant to enter in his Activity Log the name of the

subordinate that he assigns to secure the scene. Rinaldi stated on recross-examination that the identity of the officer assigned to the scene would be noted on the Roll Call. On continued cross-examination, Rinaldi testified that he conducted an Official Department Interview of Lieutenant Donald Brosan on March 18, 2005.<sup>1</sup>

Rinaldi acknowledged, after review of his worksheet, that Mercado and Ortiz were not specifically instructed to sit inside of [REDACTED]. According to Rinaldi, Respondent Hernaiz stated in his interview that he was instructed by Mercado and Ortiz to secure the perimeter of the scene. Respondent Hernaiz also stated in his interview that while he sat in an RMP at the crime scene, he was able to see the front and side doors of the house. Rinaldi testified, however, that there were other entrances that could not be seen from a car parked in front. Rinaldi further testified that all the entrances could have been secured only if the assigned officer went inside the location and sat there. Respondent Milevoj told Rinaldi in his interview that he did not give Respondent Hernaiz specific instructions on how to secure the crime scene. According to Rinaldi, Respondent Hernaiz should have noted in his Activity Log his arrival at the scene. Rinaldi stated that police officers are taught in the Police Academy not to disturb crime scenes.

On continued redirect-examination, Rinaldi testified that a police officer checking on evidence in a crime scene would not be considered disturbing the scene. Rinaldi stated that Respondent Hernaiz was supposed to keep his eye on evidence at the scene.

On continued recross-examination, Rinaldi testified that two people jumped over a fence and entered the rear door of the house. From the RMP, Respondent Hernaiz was not able to see the individuals. He acknowledged that if Respondent Hernaiz had been

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<sup>1</sup> Respondent's Exhibit ("RX") A is a copy of the Investigating Officer's Report that Rinaldi prepared for Brosan's interview. RX B is a copy of the interview transcript.

inside the house, he would not have been able to see both the front and side doors as instructed by Brosan. Rinaldi reviewed the transcript of Brosan's Official Department Interview (RX B). He admitted that nothing in the interview indicated that Brosan instructed the Respondent to sit inside of the house.

During continued redirect-examination, Rinaldi testified that Respondent Milevoj gave instructions to Respondent Hernalz to sit inside the house.

Upon questioning by the Court, Rinaldi testified that he has been a member of the Department for more than 20 years. He explained that a shooting took place on the sidewalk outside of [REDACTED], and the perpetrator ran inside the building. According to Rinaldi, Mercado and Ortiz had been informed that there was a T-shirt and gun inside. Rinaldi did not know, however, if that information was relayed to Respondent Hernalz. He could not recall whether he learned that Brosan instructed Respondent Hernalz to safeguard the gun and the T-shirt.

Detective Randy Katakofsky

Katakofsky, who is currently assigned to the Internal Affairs Bureau, Group 22 initially investigated Respondent Hernalz's involvement in a shooting based on a call his unit received from the Command Center. Following the investigation, Respondent Hernalz was not linked to any misconduct involved in the shooting. Katakofsky testified that what was uncovered was criminal association in that Respondent Hernalz had a relationship with [REDACTED], a known drug dealer. During the course of his investigation, Katakofsky interviewed [REDACTED]. [REDACTED] told Katakofsky that he "hung out" with Respondent Hernalz at a local bar. [REDACTED] explained to Katakofsky that

whenever he and Respondent Hernaiz happened to be at the bar at the same time, they would play a game of pool and have a drink together. At an Official Department Interview, Respondent Hernaiz corroborated [REDACTED]'s statements. Respondent Hernaiz also told Katakofsky that he had heard on the street that [REDACTED] had been arrested before.

On cross-examination, Katakofsky testified that he interviewed [REDACTED] on October 18, 2006. According to Katakofsky, [REDACTED] stated in the interview that he spoke to Respondent Hernaiz infrequently. [REDACTED] also stated in the interview that he tried to establish a relationship with Respondent Hernaiz, but Respondent Hernaiz did not seem to want any part of it. In fact, [REDACTED] told Katakofsky that he did not have a social relationship with Respondent Hernaiz.

During the course of his investigation, Katakofsky subpoenaed telephone records for an 18-month period. The records showed that [REDACTED] placed a telephone call to Respondent Hernaiz five times, and Respondent Hernaiz placed a telephone call to [REDACTED] once. Respondent Hernaiz's call to [REDACTED] was placed in May 2006. It lasted 253 seconds and that was the last telephone call between them.

#### The Respondents' Case

The Respondents offered the out-of-court statement of Lieutenant Donald Brosan (RX B) and testified in their own behalf.

#### Official Department Interview of Lieutenant Donald Brosan

Brosan was interviewed on March 18, 2005 by Sergeants Joseph Rinaldi and

Patrick Kelly of Patrol Borough Bronx Investigations Unit. Brosan's legal representative was Kevin Letty of the Lieutenant's Benevolent Association. Brosan was interviewed as a witness in this matter.

Brosan stated in sum and substance that he was the training lieutenant at Patrol Borough Manhattan North. He said that on April 17, 2004 he was a sergeant assigned to the 43 Precinct as the desk officer. He worked a tour from 6:55 a.m. to 3:52 p.m. He did not conduct the roll call on that date. While assigned to the desk, Brosan received a telephone call from Respondent Hernaiz who was at a crime scene. He acknowledged that he did not speak to Respondent Hernaiz in the station house prior to him responding to the crime scene following roll call. He also denied that he authorized Respondent Hernaiz to take a vehicle to the crime scene. Brosan recalled that shortly after reporting to the crime scene, Respondent Hernaiz called him at the desk and informed him that he was assigned to a fixed post to safeguard evidence inside a residence. Respondent Hernaiz complained about the assignment and Brosan informed him that there was nothing that he could do. Brosan informed him that if he needed to take a personal, he could call a sector car or a sergeant to the scene.

Brosan further recalled that Respondent Hernaiz asked whether he could sit in a Radio motor patrol car (RMP). Brosan responded, "George...I can get it to you, as long as it doesn't take away from you doing your job, which is, it is part of the residence of Beach Avenue, from watching both doors, there must be a side door and a front door, you have to be able to police that position and if you can do that with a car, fine, you can have a car, but it's a fix and we are waiting on search warrant. So, I know it is uncomfortable but there it is." Brosan acknowledged that one person could see both doors if the person



stayed in position. Brosan could not recall Respondent Hernaiz asking for relief. He also could not recall whether Respondent Hernaiz actually received an RMP to sit in at the crime scene. The interview was concluded.

Respondent Sergeant Davor Milevoj

Respondent Milevoj, a 12-year member of the Department, is currently assigned to the Medical Division. On April 17, 2004, he had held the rank of sergeant for just a couple of weeks. On that day, Respondent Milevoj was assigned as patrol supervisor at the 43 Precinct. Before roll call, Brosan told Respondent Milevoj to assign Respondent Hernaiz to the crime scene at [REDACTED]. Consequently, Respondent Milevoj instructed Respondent Hernaiz at roll call to guard the crime scene. Respondent Milevoj stated that he did not recall having any further conversation with Respondent Hernaiz that day. He testified that when he responded to a crime scene as a police officer, he would receive from the officers already at the scene instructions regarding the situation and exactly what to guard. Respondent Milevoj never visited the crime scene at [REDACTED] himself. This is why he never made an Activity Log entry indicating that he inspected Respondent Hernaiz at the scene. He explained that he was busy that day, between responding to other locations and adjusting to his new assignment in a new command.

On cross-examination, Respondent Milevoj testified that he believed he was instructed at the start of his tour to assign a police officer to sit inside the dwelling. He did not recall, however, if he ever specifically instructed Respondent Hernaiz to go inside.

On redirect examination, Respondent Milevoj testified that it is the norm for a police officer arriving at a crime scene to rely on the officers already there for instructions on exactly what to guard.

On recross-examination, Respondent Milevoj testified that when he was a police officer arriving at a crime scene, the officers who were already at the scene before him would let him know if there was a gun at the scene that needed to be guarded. He would then look at the gun to ensure that it was where it was supposed to be. He would also find out from the officers who were already there the exact confines of the scene. If an entire house was considered the crime scene, he would walk around the perimeter of the house to make sure it was secure, and he would also check windows and locks. If, on the other hand, just a single apartment within the house was considered the crime scene, he would focus his attention on that one apartment. Respondent Milevoj testified that if he was supposed to guard property within the scene, he would remain inside the scene during his entire assignment.

Respondent Police Officer Jorge Hernaiz

Respondent Hernaiz, a 13-year member of the Department, is currently assigned to Housing Bureau, Viper 12. On April 17, 2004, his original assignment was a day tour in sector Boy/David in the 43 Precinct with a partner. After roll call that day, he was re-assigned to guard the crime scene at [REDACTED] alone. Respondent Milevoj instructed him to go to the crime scene and to find out there exactly what he needed to do. Respondent Milevoj neither informed him that the dwelling was subdivided into apartments nor specifically instructed him to sit inside.

Respondent Hernaiz testified that he had a conversation with Brosan before he left the station house. Brosan told Respondent Hernaiz that he could use an RMP so long as it did not prevent him from watching the dwelling's front and side entrances. Brosan did not tell Respondent Hernaiz that he had to sit inside the dwelling, that the dwelling was divided into multiple apartments, or anything else about the crime scene. During the course of his career, Respondent Hernaiz has guarded more than 50 crime scenes. He testified that he had been given instructions to guard the perimeter, and he understands "perimeter" to mean the outside area.

A sector car dropped Respondent Hernaiz off at the crime scene, where he relieved Mercado and Ortiz. When Respondent Hernaiz arrived at the dwelling, Mercado and Ortiz were standing outside in the front of the house. Mercado and Ortiz informed Respondent Hernaiz that there was a firearm in the dwelling, but they did not tell him exactly where in the dwelling the gun was located. Mercado and Ortiz did not discuss any other evidence with Respondent Hernaiz. They told him to secure the front and side doors, ensuring that nobody entered or exited. Although Mercado and Ortiz informed Respondent Hernaiz that there was a rear door, Respondent Hernaiz did not believe that they ever took him around to the back of the house. When Mercado and Ortiz left the scene, they left an RMP behind for Respondent Hernaiz to use. Respondent Hernaiz guarded the dwelling from the RMP. From his location, he was able to see both the front door and side door. Respondent Hernaiz later learned that the gun inside the house was missing. Respondent Hernaiz testified that he made an entry in his Activity Log indicating that he was assigned to [REDACTED].

Respondent Hernaiz testified that he came upon the scene of a shooting in his neighborhood one evening. He spoke to [REDACTED] who mentioned that he may have information on the shooting. Respondent Hernaiz stated that on three or four occasions he saw [REDACTED] at the pool hall, where they played pool or had a drink together. They have neither been to each others' homes nor gone to social events together. The Department learned about Respondent Hernaiz's relationship with [REDACTED] after Respondent Hernaiz responded while off-duty to the scene of a shooting to which [REDACTED] was a possible witness.

On cross-examination, Respondent Hernaiz testified that Mercado and Ortiz informed him that a homicide had occurred on the sidewalk in front of the house. They also told him that the perpetrator's firearm and T-shirt were somewhere inside the dwelling. Respondent Hernaiz never went inside the house. He explained that he did not think it necessary to confirm that the gun and T-shirt were actually there because he took Mercado and Ortiz at their word. Furthermore, he did not want to upset the evidence. Mercado and Ortiz instructed Respondent Hernaiz to make sure nobody entered the basement. Respondent Hernaiz explained that he was comfortable not inspecting the rear of the house because Mercado and Ortiz had told him that the rear door was bolted shut. He was never informed that there was a staircase inside the house that connected the basement with the second floor. He testified that had he known at the time that there were doors to the house that he could not see, he would have probably asked a supervisor if he could work with a partner. He did not spend his entire tour watching the dwelling from the RMP but sometimes exited the RMP and stood in front of the house. In his Official Department Interview, Respondent Hernaiz stated that when he arrived at the

scene, either Mercado or Ortiz was just inside the dwelling and seemed to be closing the door.

On redirect examination, Respondent Hernalz testified that one person alone could not possibly see all four sides of the dwelling. Similarly, a person positioned inside the house could not see the outside doors of the house. Respondent Hernalz later learned that the house had been burglarized. According to the Department's investigation, the burglar jumped over the back fence. Respondent Hernalz testified that had he been inside the house, he would not have been able to see the burglar in the back. He stated that it could have been a dangerous situation had he been inside the apartment where the burglar took the firearm.

On recross-examination, Respondent Hernalz testified that he was at the crime scene for almost an entire tour. During that period, he walked around to the back of the house once or twice. He stated that having an RMP with a police officer outside of a crime scene can deter people from approaching the scene. Having a police officer in uniform walk around the scene can also be a deterrent.

#### FINDINGS AND ANALYSIS

Disciplinary Case No. 81251/05  
Specification No. 1

Respondent Milevoj stands charged with failing to supervise Respondent Hernalz (a member of the service under his supervision) in that he failed and neglected to properly instruct Respondent Hernalz in how to safeguard a crime scene, resulting in the loss of evidence from the crime scene. Respondent Milevoj testified that he was told to place a police officer inside the crime scene at [REDACTED]. Evidence at trial

showed, however, that when Respondent Milevoj sent Respondent Hernaiz to the scene, he never specifically instructed Respondent Hernaiz to go inside the dwelling.

Respondent Milevoj's instructions to Respondent Hernaiz should have been as specific as possible. While it is impossible to know if Respondent Hernaiz's presence inside the house would have prevented the evidence from being stolen, having Respondent Hernaiz positioned inside the dwelling would have naturally been the best way to secure the evidence.

Accordingly, I find Respondent Milevoj Guilty of Specification No. 1.

Specification No. 2

Respondent Milevoj stands charged with failing and neglecting to properly make and maintain Activity Log entries. According to Rinaldi, Respondent Milevoj should have had entries in his Activity Log indicating that he went to the crime scene and inspected Respondent Hernaiz's Activity Log. Respondent Milevoj logically explained that he did not have those entries in his Activity Log because he never went to the crime scene at any point during his busy tour that day. Whether or not Respondent Milevoj should have gone to the scene that day is an entirely different matter, one which was not raised by the Department. Given the fact that Respondent Milevoj never went to the crime scene, it stands to reason that he would not have any entries in his Activity Log regarding his presence there.

Accordingly, Respondent Milevoj is found Not Guilty of Specification No. 2.

Disciplinary Case No. 81257/05  
Specification No. 1

Respondent Hernalz stands charged with failing and neglecting to properly safeguard a crime scene, resulting in the loss of evidence. Respondent Hernalz's defense to this charge was that Respondent Milevoj never specifically instructed Respondent Hernalz on what to do at the crime scene and that he was not told to remain inside the house. Nevertheless, Respondent Hernalz testified before this forum that he is a 13-year member of the Department who has safeguarded more than 50 crime scenes in his career. It is the belief of this Court that when he arrived at the location and was informed by Mercado and Ortiz that there was a homicide and a gun and T-shirt were recovered, he had a duty, at a minimum, to inspect the scene, look at the evidence and secure the perimeter of the building as Rinaldi testified to. He was informed that there was a rear door at the back of the house and he could have inspected that as well. Respondent Hernalz did not visually inspect the evidence, check the apartment, look at the windows or make any other observations inside the house prior to Mercado and Ortiz leaving the scene. He did not check these things after the two officers left the scene either. Respondent Hernalz should have been familiar with everything that Mercado and Ortiz were familiar with.

Respondent Hernalz had an eight-hour tour with which to periodically check the crime scene and the perimeter of the building. He testified that he remained in his RMP and walked around the building "once or twice." He never inspected the evidence and never entered the apartment. It is interesting to note that when Respondent Hernalz arrived at the location, he testified that he did not find Mercado and Ortiz sitting in the RMP. He stated that they appeared to have just been in the dwelling and were closing the

door. They advised him of what evidence existed and he did nothing to confirm this information. Evidence at trial showed that Respondent Hernaiz secured the front and side doors of the dwelling, but he was also told by Brosan that he could have an RMP only if it does not "take away from his job" to "police the position." As a veteran police officer, Respondent Hernaiz should have understood this to mean that he must do more than just sit in an RMP for eight hours in securing a crime scene. Had he periodically changed his position during the tour, the omnipresence of the police may have acted as a deterrent to prevent the ultimate theft of the evidence.

Accordingly, I find Respondent Hernaiz Guilty of Specification No. 1.

Specification No. 2

Respondent Hernaiz also stands charged with failing and neglecting to properly make and maintain Activity Log entries. A copy of Respondent Hernaiz's Activity Log was not presented as evidence at this trial. In the absence of such evidence, this Court is unable to determine whether or not Respondent Hernaiz failed to make any Activity Log entries as charged. Such is the case particularly since Rinaldi testified that Respondent Hernaiz did not have any entries related to the crime scene; yet Respondent Hernaiz testified that he indicated in his Activity Log his assignment and that he was present at the Beach Avenue location.

Accordingly, I find Respondent Hernaiz Not Guilty of Specification No. 2 based on the insufficiency of the evidence presented to prove this charge.



Disciplinary Case No. 82685/07

Respondent Hernaiz stands charged with knowingly associating with [REDACTED], a known drug dealer. Respondent Hernaiz testified that on three or four occasions he saw [REDACTED] at the pool hall, where they played pool or had a drink together. Respondent Hernaiz knew at the time that [REDACTED] had an arrest record. While telephone records did show that Respondent Hernaiz once called [REDACTED], there was no evidence that their relationship ever really went beyond their isolated pool-hall encounters. Those encounters, taken alone, were nonetheless incidents of inappropriate contact between an off-duty police officer and a known criminal. Respondent Hernaiz should have excused himself from [REDACTED]'s company when he ran into [REDACTED] at the pool hall or he could have simply stopped patronizing that establishment.

If Respondent Hernaiz had these encounters with [REDACTED] to ascertain information from him in relation to the shooting, then Respondent Hernaiz had a duty to inform the Department that he intended to take police action. The Department would then be in a position to either grant him permission to engage in this conduct on duty or off-duty. Absent such Department approval, Respondent Hernaiz's conduct amounted to association with a known criminal.

Accordingly, I find Respondent Hernaiz Guilty as charged.

PENALTY

In order to determine appropriate penalties, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

Respondent Milevoj was appointed to the Department on June 30, 1995, and Respondent Hernaiz was appointed to the Department on February 28, 1994. Information from their personnel folders that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

Respondent Milevoj has been found Guilty of wrongfully and without just cause failing to supervise Respondent Hernaiz in that he failed and neglected to properly instruct Respondent Hernaiz in how to safeguard a crime scene, resulting in the loss of evidence from the crime scene. In Disciplinary Case No. 80613/05, an eight-year member assigned to supervise a crime scene forfeited eight vacation days for failing to properly safeguard property located at the scene, resulting in the removal of personal property before it could be invoiced. For his similar misconduct, I recommend that Respondent Milevoj likewise forfeit eight vacation days.

Respondent Hernaiz has been found Guilty of knowingly associating with Malcolm, a known drug dealer. In Disciplinary Case No. 80982/05, a three-year member forfeited eight-vacation days for maintaining a friendship with someone he knew had a criminal record. While sterner penalties have often been imposed in criminal association cases, given the slight nature and extent of Respondent Hernaiz's relationship with [REDACTED], i.e., playing pool on two or three occasions and one telephone call made to [REDACTED] in an 18-month period, the eight-day penalty would be recommended for that charge. Respondent Hernaiz has also been found Guilty of failing to properly safeguard a crime scene. It is recommended that Respondent Hernaiz forfeit a total of 15 vacation

days to resolve the two charges where he has been found Guilty, i.e., criminal association  
and failing to safeguard property.

Respectfully submitted,

*Claudia Daniels DePeyster*

Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials

APPROVED  
MAR 26 2009  
*[Signature]*  
RAYMOND W. KELLY  
POLICE COMMISSIONER